



Total Petrochemicals & Refining USA, Inc.

Corporate Headquarters

**Via Email and Certified Mail,  
Return Receipt Requested**

Mr. Edwin Quinones, Attorney  
Office of Regional Counsel  
(6RC-S)  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

**Re: Star Lake Canal Superfund Site CERCLA Section 104(e) Request**

March 13, 2018

Dear Ed:

Reference is made to the EPA's Information Request Pursuant to CERCLA Section 104(e) relating to the Star Lake Canal Superfund Site (the "Site") to Total Petrochemicals & Refining USA, Inc. ("TPRI") (the "104(e) Request"). This letter follows up on my prior letter dated January 8, 2018, and sets forth TPRI's additional response to the 104(e) Request in light of our recent correspondence and the February 8, 2018 meeting between TPRI, BP and the EPA in Dallas, Texas.

As an initial matter, I want to thank you for giving us the opportunity to meet with the EPA to discuss the 104(e) Request and the so-called "Nexus Summary" provided to the EPA by the Potentially Responsible Party ("PRP") group for the Site. As set forth in the presentation by CDM Smith, the conclusion in the Nexus Summary that the right prong of the Molasses Bayou serves as a significant pathway for contaminants from the TPRI Refinery to the Site is based on fundamentally incorrect assumptions and unsupported by scientific evidence. Conversely, CDM Smith's analysis is based on current and historical hydrological data, sampling data from the remedial investigation, and other analytical data relating to the right prong. Based on this data, CDM Smith demonstrated that:

- Starting with the installation of the Boat Canal around 1930, the right prong has been a severely diminished sediment transport pathway, and is continuing to diminish;
- In contrast, the left prong has been a continually open pathway to the Molasses Bayou AOI;
- Analytical data from the Site remedial investigation and other sources does not indicate the presence of tidally-distributed contamination in the right prong; and
- Sampling data from the right prong indicates that discharges from historical Outfalls 001, 002, and 003 did not create right prong source zones for the Site.

Regarding the 104(e) Request, as discussed during the February 8, 2018 meeting, our primary goal is to provide documents that are responsive to the EPA's requests, but are also relevant to whether TPRI's operations could have potentially affected the Site. Accordingly, we are confirming our understanding reached at the February



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8, 2018 meeting that: (1) TPRI will take a phased approach to producing responsive documents, beginning immediately and reaching substantial completion by March 23, 2018; and (2) TPRI's document production will focus on discharges from TPRI's property that could have had an impact on the right prong of the Molasses Bayou, specifically discharges that occurred along the northern border of TPRI's property closest to the right prong. To that end, we are enclosing with this letter a flash drive containing TPRI's first document production, Bates-labeled TPRISL 000001 through TPRISL 001640, which we are producing subject to TPRI's responses and objections to the 104(e) Request, attached as Appendix A.

Finally, CDM Smith will convert the above-described presentation given at the February 8, 2018 meeting into a written report, which we will produce to the EPA upon completion. We are confident that this report, along with the materials produced by TPRI, will demonstrate that the TPRI Refinery was at most a *de minimis* source of contamination at the Site.

Please let us know if you have any questions or if our understanding regarding the revised scope of the 104(e) Request is incorrect.

Sincerely,

A handwritten signature in blue ink, appearing to read "JRH", with a long horizontal line extending to the right.

Joseph R. Herbster  
Assistant General Counsel – HSE

cc: Kenneth Talton, Enforcement Officer  
Superfund Enforcement Assessment Section (6SF-TW)  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

## APPENDIX A

### GENERAL OBJECTIONS

Respondent Total Petrochemicals & Refining USA, Inc. ("TPRI" or "Respondent") makes the following General Objections to the U.S. Environmental Protection Agency's ("EPA") November 1, 2017 General Notice Letter/104(e) Request (the "Request"), including the requests for documents contained therein, and incorporates its General Objections into the responses and objections to each individual request below:

(1) TPRI objects to the Request to the extent it is overly broad, unduly burdensome, and seeks information that could as readily be located and identified by the EPA as by TPRI, including information that may be derived or ascertained from documents identified and made available by TPRI but that is also in the public record.

(2) TPRI objects to the Request to the extent it seeks information that is not authorized or required to be furnished under Section 104(e) of CERCLA, and is not relevant to the types of information required to be made available under CERCLA § 104(e)(2)(A)–(C), which is limited to: (A) the identification, nature and quantity of materials generated, treated, stored or disposed of at the Site; (B) the nature or extent of any release or threatened release of a hazardous substance at or from the Site; and/or (C) or the ability of any person to pay for or perform a cleanup at the Site. TPRI also objects to the Request to the extent it constitutes the functional equivalent of devices used during the discovery phase of a civil action, which are distinct from, and beyond the scope of, an administrative investigation authorized by Section 104(e). *See, e.g.*, Guidance on Use and Enforcement of CERCLA Information Requests and Administrative Subpoenas at 3–4, U.S. Environmental Protection Agency (Aug. 25, 1988).

(3) TPRI objects to the Request as overbroad to the extent it seeks information about releases or discharges of hazardous material on any portion of the TPRI Port Arthur Refinery property rather than on only those portions of the property that may impact the right prong of the Molasses Bayou. TPRI further objects that the Request seeks the quantity, composition, and physical state of each hazardous substance released on any part of the TPRI Port Arthur Refinery property over more than forty years as such request is overbroad, unduly burdensome, expensive, prohibitively time-consuming, and infeasible within the timeframe designated for response.

(4) TPRI objects to the Request to the extent it seeks undocumented information, including descriptions of oral communications, discussions, conversations, and agreements, as well as individuals' awareness of events and circumstances, regarding events occurring over an extended period of time and many years ago.

(5) TPRI objects to the Request to the extent that it calls for information or documents protected under the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, the self-evaluation privilege, the right of privacy laws, the protection afforded trade secrets and confidential business information, and/or any other applicable privilege.

(6) TPRI objects to the Request to the extent it seeks to impose on TPRI an obligation to obtain information or documents from third persons or in the public record, or which otherwise are not in TPRI's custody or control.

### OBJECTIONS TO THE INSTRUCTIONS AND DEFINITIONS

Without waiving or limiting its General Objections, which apply to all of the questions below, TPRI makes the following objections to the Instructions and Definitions and to all questions and requests for copies of documents that purport to use these Instructions and Definitions. In addition, and without any waiver of its General Objections, specific objections to individual questions in the Request are stated in response to that particular question. Without waiving or limiting its Objections to the Instructions and Definitions, TPRI has attempted to respond to the Request as completely and accurately as possible.



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TPRI objects to Instruction No. 1 on the basis that some of the questions are overlapping and redundant, such that a separate "answer to each and every question and subpart of a question" would be unduly burdensome and unnecessary.

TPRI objects to Instruction No. 3 to the extent that it seeks to impose continuing obligations upon TPRI other than and outside the scope of those authorized pursuant to CERCLA § 104(e).

TPRI objects to Definition No. 4 on the grounds that the definition of "document" and "documents" is overbroad, unduly burdensome, and includes information that is protected under the attorney-client privilege, the attorney work product doctrine, joint defense privilege, the self-evaluation privilege, the right of privacy laws, the protection afforded trade secrets, and any other applicable privilege.

TPRI objects to Definitions No. 8, 9 and 10 of the term "identify" as unduly burdensome, since these definitions require extensive information beyond what is customarily and reasonably needed or acceptable to identify a corporation, document, or person.

TPRI objects to Definition No. 19 of "you," "your," and "Respondent," insofar as this definition includes successors, parent companies, and subsidiary companies, on the grounds that it is overly broad and that to respond to any request using this definition would be impracticable, beyond the scope of TPRI's obligations under Section 104(e) of CERCLA, unduly burdensome, prohibitively time-consuming, and expensive.

### **RESPONSES TO QUESTIONS REGARDING GENERAL INFORMATION CONCERNING RESPONDENT**

#### **Question 1:**

Provide the full legal name and mailing address of the Respondent. Also, identify Respondent's prior name(s) and Respondent's assumed names.

#### **Response:**

Total Petrochemicals & Refining USA, Inc.  
1201 Louisiana Street, Suite 1800  
Houston, Texas 77002

Regarding previously used names, Respondent has used the names: American Petrofina, Inc.; FINA, Inc.; and ATOFINA Petrochemicals, Inc.

#### **Question 2:**

Identify and provide the full name, title, business address, and business telephone number for each person answering these questions on behalf of the Respondent, and each person(s) that was relied on or consulted with in the preparation of the answer.

#### **Response:**

Joseph Herbster, Assistant General Counsel  
Total Petrochemicals & Refining USA, Inc.  
1201 Louisiana Street, Suite 1800  
Houston, Texas 77002  
(713) 483-5364

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Fraser Will, Remediation Project Coordinator  
Total Petrochemicals & Refining USA, Inc. / Retia USA  
1201 Louisiana Street, Suite 1800  
Houston, Texas 77002  
(713) 483-5051

Roger Smith, Operations Superintendent  
Total Petrochemicals & Refining USA, Inc.  
Port Arthur Refinery  
7600 32nd Street  
Port Arthur, TX 77642  
(409) 985-0464

Nancy MacKimm  
Jones Day  
717 Texas, Suite 3300  
Houston, TX 77002  
(832) 239-3776

William Taylor  
Jones Day  
717 Texas, Suite 3300  
Houston, TX 77002  
(832) 239-3860

Diane Myers  
Jones Day  
717 Texas, Suite 3300  
Houston, TX 77002  
(832) 239-3898

### **Question 3:**

If Respondent wishes to designate an individual for all future correspondence concerning this Site, including legal notices, please provide the individual's name, address, and telephone number.

### **Response:**

Joseph Herbster, Assistant General Counsel  
1201 Louisiana Street, Suite 1800  
Houston, Texas 77002  
(713) 483-5364

### **Question 4:**

If Respondent is a business, please give a brief description of the business formation and nature of the business.

### **Response:**

In 1973, American Petrofina, Inc., a predecessor of Total Petrochemicals & Refining USA, Inc., purchased the Port Arthur Refinery from BP Oil Corporation. The Port Arthur Refinery processes a mixture of crudes with conversion capabilities centering on coking, fluid catalytic cracking, and reforming technologies.

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### RESPONSES AND OBJECTIONS TO REQUESTS FOR DOCUMENTS

#### Unnumbered Request

Please identify (see Definitions) and provide copies of all documents (see Definitions) consulted, examined, or referred to in the preparation of the answers to the above [sic] questions including all subparts of each question, or that contain information responsive to the question.

#### Objection:

TPRI objects to this request as overbroad in that it seeks "all documents . . . consulted, examined, or referred to" in preparing this response. TPRI further objects to this request to the extent it seeks identification of documents that are protected by one of the privileges described in General Objection 5 above and/or were prepared by or for the EPA or that could be as readily located and identified by the EPA as by TPRI, including documents in the public record.

#### Request 1:

1. Does or did Respondent own and or operate on parcel(s) and/or tract(s) of land situated in, and/or adjacent to, the area known as Molasses Bayou in Jefferson County, Texas and/or parcel(s) and/or tract(s) of land between Pure Atlantic Road (a/k/a Highway 366) and Molasses Bayou in Jefferson County, Texas?

a. If Respondent's answer to this question is yes, please provide a copy of each recorded deed that documents each purchase (purchased land area hereafter referred to as "Respondent's Molasses Bayou Property" or "its Molasses Bayou Property").

b. If Respondent's answer to this question is no, please identify the owner(s) of the property upon which Respondent currently conducts business operations in the area between Pure Atlantic Road (a/k/a Highway 366) and Molasses Bayou in Jefferson County, Texas.

#### Objection:

TPRI objects to this question to the extent it seeks identification of documents that: (i) are protected by one of the privileges described in General Objection 5 above; (ii) are responsive to more than one question; and/or (iii) were prepared by or for the EPA or that could be as readily located and identified by the EPA as by TPRI, including documents in the public record. TPRI further objects to this question because the term "Molasses Bayou Property" is undefined, vague, and overly broad.

#### Response:

TPRI will produce documents pursuant to the scope set out in its March 13, 2018 letter to which these objections and responses are attached.

#### Request 2:

2. Prior to Respondent's acquisition and/or control of its Molasses Bayou Property, had Respondent been advised, heard rumors, or been given reason to believe any hazardous substance had been disposed of onto the property, released onto the property, allowed to drain across the property, and/or drain from the property onto any part of the adjacent Molasses Bayou wetland? If Respondent's answer to this question is yes, please explain and provide copies of all documents having information about the disposal/release of any hazardous substance(s).



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### **Objection:**

TPRI objects to this question as overbroad and unduly burdensome in that it effectively requests that TPRI inquire into the personal knowledge of every TPRI employee that may have "been advised, heard rumors, or been given reason to believe" that hazardous materials were released on the TPRI Port Arthur Refinery property prior to TPRI's acquisition of the property. TPRI further objects that this question seeks information that is not relevant to releases that may have impacted the right prong of Molasses Bayou in that it seeks unsubstantiated and undocumented information that TPRI employees may have "reason to believe" or may have heard in the form of "rumors" from unidentified third parties. Additionally, TPRI objects to this question because the terms/phrases "Molasses Bayou Property," "Molasses Bayou wetland," "rumors" and "reason to believe" are undefined, vague, and overly broad.

### **Response:**

TPRI will produce documents pursuant to the scope set out in its March 13, 2018 letter to which these objections and responses are attached.

### **Request 3:**

3. At any time after Respondent acquired and/or controlled any part of Its Molasses Bayou Property, had Respondent been advised, heard rumors, or had reason to believe any hazardous substance had been disposed onto the property, released onto the property, allowed to drain across the property, and/or drain from the property onto any part of the adjacent Molasses Bayou wetland? If Respondent's answer to this question is yes, please explain and provide copies of all documents having information about the disposal/release of such hazardous substance(s).

### **Objection:**

TPRI objects to this question to the extent it seeks identification of documents that: (i) are protected by one of the privileges described in General Objection 5 above; (ii) are responsive to more than one question; and/or (iii) were prepared by or for EPA or that could be as readily located and identified by the EPA as by TPRI, including documents in the public record. TPRI further objects that this question seeks information that is not relevant to releases that may have impacted the right prong of Molasses Bayou in that it seeks unsubstantiated and undocumented information that TPRI employees may have "reason to believe" or may have heard in the form of "rumors" from unidentified third parties. Additionally, TPRI objects to this question because the terms/phrases "Molasses Bayou Property," "Molasses Bayou wetland," "rumors," and "reason to believe" are undefined, vague, and overly broad.

### **Response:**

TPRI will produce documents pursuant to the scope set out in its March 13, 2018 letter to which these objections and responses are attached.

### **Request 4:**

4. Has Respondent ever leased, rented, or in any other way allowed any person(s) and/or any business entity/entities to dispose/release any hazardous substance onto Its Molasses Bayou Property? If Respondent's answer to this question is yes, please explain and provide a copy of all lease agreements, all rental agreements, and/or other written agreements that granted/allowed the disposal/release of a hazardous substance onto Its Molasses Bayou Property.

### **Objection:**

TPRI objects to this question to the extent it seeks identification of documents that: (i) are protected by one of the privileges described in General Objection 5 above; (ii) are responsive to more than one question; and/or (iii) were

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prepared by or for the EPA or that could be as readily located and identified by the EPA as by TPRI, including documents in the public record. TPRI further objects to this question because the term "Molasses Bayou Property" is undefined, vague, and overly broad.

### **Response:**

TPRI will produce documents pursuant to the scope set out in its March 13, 2018 letter to which these objections and responses are attached.

### **Request 5:**

5. Provide copies of all environmental investigations initiated by Respondent that were/are related to disposal/release of a hazardous substance onto Its Molasses Bayou Property.

### **Objection:**

TPRI objects to this question to the extent it seeks identification of documents that: (i) are protected by one of the privileges described in General Objection 5 above; (ii) are responsive to more than one question; and/or (iii) were prepared by or for the EPA or that could be as readily located and identified by the EPA as by TPRI, including documents in the public record. TPRI further objects to this question because the term "Molasses Bayou Property" is undefined, vague, and overly broad.

### **Response:**

TPRI will produce documents pursuant to the scope set out in its March 13, 2018 letter to which these objections and responses are attached.

### **Request 6:**

6. Provide copies of all reports Respondent has received from the City of Port Neches, the County of Jefferson, and/or the State of Texas that pertain to disposal/release of any hazardous substance(s);

a. On Respondent's Molasses Bayou Property.

b. From Respondent's Molasses Bayou Property via drainage across the property and thereafter onto part(s) of the adjacent Molasses Bayou wetland.

### **Objection:**

TPRI objects to this question to the extent it seeks identification of documents that: (i) are protected by one of the privileges described in General Objection 5 above; (ii) are responsive to more than one question; and/or (iii) were prepared by or for the EPA or that could be as readily located and identified by the EPA as by TPRI, including documents in the public record. TPRI further objects to this question because the terms "Molasses Bayou Property" and "Molasses Bayou wetland" are undefined, vague, and overly broad.

### **Response:**

TPRI will produce documents pursuant to the scope set out in its March 13, 2018 letter to which these objections and responses are attached.



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### Request 7:

7. Describe Respondent's activities that pertain to disposing/releasing hazardous substances on Its Molasses Bayou Property. Unless Respondent's answer to the preceding statement is, "Respondent has never conducted any of the described activities on its Molasses Bayou Property," please answer the following questions:

- a. Described [sic] the type(s) and quantity of hazardous substance(s) released onto Respondent's Molasses Bayou Property, and
- b. Describe the chemical composition, characteristics, physical state, e.g., solid, liquid, gas, of each hazardous substance(s) released onto Respondent's Molasses Bayou Property, and
- c. Identify the quantity/quantities of each such hazardous substance(s) released onto Respondent's Molasses Bayou Property.

### Objection:

TPRI objects to this question to the extent it seeks identification of documents that: (i) are protected by one of the privileges described in General Objection 5 above; (ii) are responsive to more than one question; and/or (iii) were prepared by or for the EPA or that could be as readily located and identified by the EPA as by TPRI, including documents in the public record. TPRI further objects to this question because the term "Molasses Bayou Property" is undefined, vague, and overly broad.

### Response:

TPRI will produce documents pursuant to the scope set out in its March 13, 2018 letter to which these objections and responses are attached.

### Request 8:

8. At any time was any hazardous substance(s) from any person(s), from any adjacent property owner(s), and/or from any business entity/entities (other than from Respondent) released onto Respondent's Molasses Bayou Property? Unless Respondent's absolute answer to the preceding statement is, "Such described activities never occurred on or at Respondent's Molasses Bayou Property," please answer the following questions:

- a. Describe type(s) and quantity of hazardous substance(s) released onto Respondent's Molasses Bayou Property, and
- b. Describe the chemical composition, characteristics, physical state, e.g., solid, liquid, gas, of each hazardous substance(s) released onto Respondent's Molasses Bayou Property, and
- c. Identify the quantity/quantities of each such hazardous substance(s) released onto Respondent's Molasses Bayou Property, and
- d. Identify the person(s) and/or business entity/entities that transported the hazardous substance(s) that had been released onto Respondent's Molasses Bayou Property, and
- e. Identify the person(s) and/or business entity/entities from which the transporter(s) obtained the hazardous substance(s) that had been released onto Respondent's Molasses Bayou Property, and
- f. Date(s) the hazardous substance(s) had been released onto Respondent's Molasses Bayou Property.

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### **Objection:**

TPRI objects to this question to the extent it seeks documents beyond TPRI's custody or control. TPRI further objects to this question to the extent it seeks identification of documents that: (i) are protected by one of the privileges described in General Objection 5 above; (ii) are responsive to more than one question; and/or (iii) were prepared by or for the EPA or that could be as readily located and identified by the EPA as by TPRI, including documents in the public record. Additionally, TPRI objects to this question because the term "Molasses Bayou Property" is undefined, vague, and overly broad. TPRI further objects that the phrase "Respondent's absolute answer" is unintelligible.

### **Response:**

TPRI will produce documents pursuant to the scope set out in its March 13, 2018 letter to which these objections and responses are attached.